IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRIMINAL MISC.NO.67881 M OF 2006

DATE OF DECISION: JANUARY 31, 2007

Gurcharan Kaur Bhullar

.....Petitioner

VERSUS

State of Punjab and another

....Respondents

CORAM:- HON'BLE MR.JUSTICE RANJIT SINGH

1. **Whether Reporters of local papers may be allowed to see the judgement?**
2. **To be referred to the Reporters or not?**
3. **Whether the judgment should be reported in the Digest?**

PRESENT: Mr. K. S. Sidhu, Advocate,
for the petitioner.

Mr. M. C. Berry, Sr.DAG, Punjab,
for the State.

Mr. R. K. Sharma, Advocate for
Mr. M. M. Garg, Advocate,
for added respondent.

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RANJIT SINGH, J.

Gurcharan Kaur Bhullar wife of Late Piara Singh Bullar, presently resident of 7569, Langworthi Drive, Mississauga, Ontario, Canada, has filed this petition under Section 482 Cr.P.C. for quashing the order dated 18.10.2001, Annexure P-1, whereby she was declared as proclaimed offender in FIR No.47 dated 19.3.2001 registered under Sections 406, 498A-A, 506, 323/34 IPC at Police Station Jagraon.

The petitioner, who had left India on 5.3.2001, is aggrieved against

registration of the above referred FIR on the ground that she has been falsely implicated in the said FIR. She is further aggrieved against the action of Judicial Magistrate, Jagraon, in declaring her proclaimed offender in this FIR without following the procedure laid down under Section 82 Cr.P.C. On 11.8.2001, the Magistrate had recorded the statement of ASI Gurcharan Singh of Police Station Jagraon to the effect that the arrest warrant of Kulpreet Singh and Gurcharan Kaur (petitioner) was given for execution. As per the Assistant Sub Inspector, the houses of the petitioner and Kulpreet Singh were raided and they had statedly concealed themselves at some unknown place on learning about the registration of the present case to avoid their arrest. The proclamation was accordingly sought, which was issued under Section 82 Cr.P.C. on 11.8.2001 and ultimately the petitioner was declared proclaimed offender on 18.10.2001. It was alleged that no efforts to serve the petitioner were made at her address in Canada and as such, the order declaring her proclaimed offender is totally illegal and liable to be quashed. It is pleaded that the petitioner has no intention to abscond and is prepared to face the present proceedings.

Notice of the petition was issued. Reply by Deputy Superintendent of Police, Jagraon, has been filed on behalf of the State-respondent. It is disclosed in the reply that Khushpreet Singh-accused, son of the petitioner was arrested on 16.4.2001 and as such, the petitioner was well aware of the case pending against her. Accordingly, she was rightly declared as proclaimed offender. While responding to the averments that no notice was served on the address of the petitioner, it is stated that statement of ASI Gurcharan

Singh, Police Station Jagraon, was recorded in this regard and hence, it is claimed to be a sufficient compliance of the requirement of Section 82 Cr.P.C.

Complainant, Karamjit Kaur Bhullar, who has been impleaded as respondent No.2 vide separate order of even date has adopted the reply filed by the State.

I have heard learned counsel for the parties.

The main submission made by learned counsel for the petitioner is that the requirement as laid down in Section 82 Cr.P.C. was not followed in this case and hence, the order declaring the petitioner to be a proclaimed offender would be illegal and liable to be set-aside. The provisions of Section 82 Cr.P.C. read thus:-

> " ***PROCLAIMATION FOR PERSON ABSCONDING.- (1)***If Any Court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation requiring him to appear at a specific place and at a specified time not less then thirty days from the date of publishing such proclamation.
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> (2) The proclamation shall be published as follows:-
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> (i) (a) it shall be publicly read in some conspicuous place of the town or village in which such person ordinarily resides;
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> (b) it shall be affixed to some conspicuous part of the house or homestead in which such person ordinarily

resides or to some conspicuous place of such town or village;

(c) a copy thereof shall be affixed to some conspicuous part of the Court-house;

(ii) the Court may also, if it thinks fit, direct a copy of the proclamation to be published in a daily newspaper circulating in the place in which such person ordinarily resides.

(3) A statement in writing by the Court issuing the proclamation to the effect that the proclamation was duly published on a specified day, in the manner specified in clause (i) of sub-section (2), shall be conclusive evidence that the requirements of this section have been complied with, and that the proclamation was published on such day."

The counsel has pointed out from the averments in the reply filed by the respondents that the petitioner was not served at her address at Canada. He also points out that there is no material on record to indicate that the other requirements of Section 82 Cr.P.C. were followed by the Magistrate in this case.

In *Sunil Kumar vs. State,* 2002 (2) Criminal Court Cases 165, *Nirmala Devi etc. Vs. State of Himachal Pradesh,* 2003 Criminal Law Journal 3499 and *Chokha alias Pukhraj Vs. State of Rajasthan,* 2006 (1) RCR (Criminal) 496, it is held that where no attempt was made to serve summons upon the accused serving in the Army or living in foreign country, it could not be said that they evaded service and the order declaring them proclaimed offenders

was termed as improper. Even on the ground that publication of proclamation had not been made by being publicly read in a conspicuous place, orders were held to be bad.

Omission to comply with all the requirements of publication prescribed by Section 82 Cr.P.C. as such, has been held to constitute a failure of justice, justifying the intervention by the High Court. It can, thus, be said that requirement of Section 82 Cr.P.C. cannot be dispensed with and where these are not followed or are shown to have not been followed, the order declaring the person as proclaimed offender cannot be sustained. In the instant case, there is nothing on record to show or to indicate that requirements of Section 82 Cr.P.C. were complied with. The petitioner has placed sufficient material on record to show that she was not served properly in this case and accordingly the order declaring her as proclaimed offender in the facts and circumstances of this case cannot be sustained.

The petition is accordingly allowed and the impugned order dated 6.9.2006 is quashed.

It may be observed that the quashing of the order declaring the petitioner as proclaimed offender would not necessarily mean that she has been permitted to escape the process of law that is in progress against her. Even though the proclamation declaring her to be a proclaimed offender has been held to be bad and quashed, the Court still has the power to direct her to appear before the Court and submit herself to the process of law. In this regard, reference can be made to the case of *Savitaben Govindbhai Patel and others Vs. State of Gujarat,* 2004 (Criminal Law Journal 3651. Accordingly, while quashing the impugned order directions are

hereby issued for her to appear before the Court and the petitioner accordingly is directed through her counsel to appear before the Court within a fortnight.

January 31, 2007 **(RANJIT SINGH)**
khurmi **JUDGE**